

**Champion Parts Rebuilders, Inc., Northeast Division
and International Brotherhood of Electrical
Workers, Local 1592, AFL-CIO. Case 6-CA-
14021**

February 25, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On September 30, 1981, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,¹ findings, and conclusions² of the Administrative Law Judge and to adopt his recommended Order.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Champion Parts Rebuilders, Inc., Northeast Division, Beech Creek and Mill Hall, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² In Conclusion of Law 3 the Administrative Law Judge stated that Respondent's layoff of 12 employees violated Sec. 8(a)(1) and (2) of the Act. It is clear from the complaint allegations and the Administrative Law Judge's findings that the layoff violated Sec. 8(a)(3), not Sec. 8(a)(2). We hereby correct this inadvertent error.

³ Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

DECISION

STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The charge in this proceeding filed on November 10, 1980, by the International Brotherhood of Electrical Workers,

260 NLRB No. 61

Local 1592, AFL-CIO, herein referred to as the Union, was served on Champion Parts Rebuilders, Inc., Northeast Division, the Respondent herein, by certified mail on November 10, 1980. An amended charge filed on December 22, 1980, by the Union was served on the Respondent on December 31, 1980. On December 29, 1980, a complaint and notice of hearing was issued. In the complaint it was alleged among other things that from on or about October 31, 1980, until November 17, 1980, the Respondent had laid off Ruth Bechtol, Margaret Confer, James Etters, Ester Ferree, Mary Frazier, Ronald Geyer, Sharon Gummo, John Latchet, Betty Merrill, June Perry, and Patricia Yarnell in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein referred to as the Act.

The Respondent filed a timely answer in which it denied that it had engaged in the alleged unfair labor practices.

The hearing was held before me in Lock Haven, Pennsylvania, on August 5, 1981. Each party was afforded a full opportunity to be heard, to examine and cross-examine witnesses, to submit proposed findings of fact and conclusions of law, and to file briefs. All briefs have been carefully considered.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material herein, the Respondent, an Illinois corporation with offices and places of business in Mill Hall and Beech Creek, Pennsylvania, has been engaged in the remanufacture and nonretail sale of automotive parts. Solely involved in this complaint and notice of hearing are the Respondent's two facilities located in Mill Hall, Pennsylvania, and its Beech Creek, Pennsylvania, facility, herein called the Respondent's facilities.¹

During the 12-month period ending November 30, 1980, in the course and conduct of its business operations the Respondent has sold and shipped from its facilities products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

The Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

First: At the time during which the events alleged in the complaint occurred, the Respondent was in the process of moving its mechanical department located on Water Street and its electrical department located on Pennsylvania Avenue in Mill Hall, Pennsylvania, to one

¹ Here the Respondent manufactures "automotive parts, starters, alternators, clutch plates, pressure assemblies, waterpumps, carburetors, [and] cellanoids." It employs approximately 300 employees.

facility in Beech Creek, Pennsylvania. In order to facilitate the transfer of the Mill Hall operations to Beech Creek the Union (with whom the Respondent had a subsisting contract) and the Respondent established "Guidelines for Move to Beech Creek Facility" in a written understanding dated February 18, 1980. During the transition period two new job classifications were utilized (task force labor grade 3 and maintenance helper) to perform the tasks of relocation such as the dismantling and reassembly of the lines in the Beech Creek facility. These jobs were open to bid.

The move started some time in early March 1980. Thereafter in June 1980 the Union and the Respondent verbally agreed to combine the above-mentioned job classifications into one classification, maintenance helper. The Union also allowed the Company more leeway in allowing production people to work in the move. Production employees were "allowed to paint the machinery on the lines and also work and help out in the stockroom to get the stockroom back together in putting up the fence." Prior to completion of the transfer a strike was engaged in on January 21, 1981, which is still pending.

During the transition period, the Respondent, as a line was discontinued, utilized the employees made idle thereby on other operating production lines and elsewhere in the plants, the idea being that a backlog of parts would be produced on the remaining operating lines which could be drawn from when the lines were down for transfer to Beech Creek. At the time the layoffs alleged in the complaint occurred the entire mechanical division had been transferred to Beech Creek without any layoffs of employees. According to Michael Smith, president of the Union, the Respondent had complied with its agreement.

On October 28, 1980, the Respondent was observed "using production employees to assemble a production line which was the rotor and stator department in the Beech Street plant." At the time the rotor and stator line had been dismantled and was being reassembled in the Beech Street facility. The 13 employees who had been assigned to the line had for the most part been absorbed in the starter lines at the Mill Hall plant. However, according to David D'Escarole, rotor and stator line foreman, three employees were sent to Beech Creek and two employees remained on the rotor and stator line where one, Sharon Gummo, "maintained her job on the rotor and stator line and she supported the delivery line and listing" and the other, Carter Kinley, "was a lathe operator in polishing."

The three employees who were sent to the Beech Creek plant were to have been assigned to unpacking and "painting their equipment," but, according to D'Escarole, they were needed in shipping. There they worked for 5 days. When they were no longer needed in shipping they were assigned to unpacking and painting for 2-1/2 days at which time, according to D'Escarole, two individuals were assigned to "setting up the pieces of the conveyor."²

² The employees involved were Carter Kinley, John Latchet, and Mary Frazier. Prior to the October 29, 1980, incident Sharon Gummo had joined this group.

In respect to the employees on the rotor and stator line the parties stipulated:

Charles Shreckengast, hire date March 26, 1964. Esther Ferree, November 3, 1958 hire date. Ruth Bechtol, August 20, 1962. Mary Frazier, September 22, 1962. Patricia Yarnell, April 3, 1964. June Perry, July 5, 1973. Carter Kinley, October 18, 1976. Betty Merrill, August 25, 1977. Sharon Gummo, May 23, 1978. John Latchet, July 24, 1978. James Eters, July 17, 1978. Ronald Geyer, August 6, 1980. Margaret Confer, August 28, 1980. Further stipulated that all of these employees were laid off on . . . October 30, 1980 with their actual first day not working on October 31, 1980 with the following exceptions: Carter Kinley although laid off on October 30 was immediately recalled, worked October 31, 1980 and did not miss any work. Charles Shreckengast was not laid off at all. All the other employees were laid off and returned to work on November 14, 1980 with one more final exception that being Mary Frazier who was laid off and did not work October 31, 1980 and was recalled on November 5, 1980 after having worked two-and-a-half days, but was . . . recalled on October 5, 1980. She worked two-and-a-half days until November 7, 1980. She was recalled permanently on November 11, 1980.

When President Smith observed the three rotor and stator line employees, Carter Kinley, John Latchet, and Mary Frazier, on October 28, 1980, performing what he considered to be maintenance helpers' work he contacted Union Vice President Harry Longo and asked him to talk to Donald Aikey, supervisor of the maintenance helpers. Longo made the contact and told Aikey that "he was working people out of their classifications. He had production people doing maintenance helpers work." Aikey "agreed" with Longo. He said he was "wrong and would correct the matter."³ About an hour later Aikey, Mechanical Superintendent Bruce Williams, and Longo approached Smith. Smith asked whether "these guys" could be switched around, "move the two maintenance helpers on the assembling of the line, and move the three production workers on the painting." Aikey said, "I see no problems with it." Smith indicated that would resolve the matter; however, Williams intervened and said, "I'm tired of kissing you guys [expletive] all the time . . . I'm tired of moving these people around to suit you guys. If your don't allow me to operate this assembly line the way I want to, I will lay them off . . . you either do it my way or I'll lay all the damn people off."⁴ Smith responded that he would like time to discuss the matter with the union committee. Williams allowed him until the next morning.⁵

³ This is Longo's credited and uncontradicted testimony.

⁴ Longo remembered Williams' statements as follows: "[H]e was sick and tired of the union complaining the way the company was handling the move, and if we didn't stop bellyaching about it that he would lay all the people off."

⁵ David D'Escarole, rotor and stator line foreman, testified that John Bryan, a maintenance helper, had complained that the "individuals setting

Continued

The next morning Smith and Longo met with Williams. Smith offered Williams a compromise. He stated, "[W]hy don't you just lay off the three individuals who you currently don't have work for in the shipping department." Williams answered, "[Y]ou'll have to either do it my way or I'll lay them off." At 2 o'clock on the following day, October 30, Williams notified Smith that all employees on the rotor and stator line would be "laid off effective 3:30 that day." Of the rotor and stator line employees, according to Smith, Schreckengast was retained because the Respondent needed him to "cut salvage rotors" and Carter Kinley was not laid off "because an employee who was a machine operator was injured on the job and they needed him to fill in for that individual." The remainder were laid off. All returned to work by November 14, 1980, to their original jobs.

On November 19, 1980, at the monthly labor meeting, Smith asked Plant Manager James B. Cameron why the employees in the rotor and stator line were laid off. Cameron stated that production costs were too high and he could not afford to keep them. Smith replied that William had given "an ultimatum that either [the Union] do it his way or they're all going to get laid off." Cameron replied, "[I]f that's what Bruce says that's why they were laid off."⁶

Cameron testified as to what Williams told him of the incident: "I remember that he told me that there was a dispute on how the people were being utilized. Other than that I can't remember exactly what the exact conversation was. Whatever it was I remember something about painting in the conversation, and it involved four employees of the rotor and stator department." Cameron testified that he had three options. He "could have gone with a temporary or permanent lay off, which could have caused displacement of personnel." Because of bumping rights Cameron said the layoff route was not "feasible." Cameron could have "absorbed" the four people in another department which was already "burdened." According to Cameron, "the most simple solution was to exercise the contract right of the temporary lay off . . . It was the quickest, easiest and simplest solution at the time to solve the problem." Cameron testified that this decision was not in retaliation for the Union's lodging a complaint. "Ultimately," Cameron stated, he would have ended up laying people off. Around 200 employees were assigned to the starter production lines.

Cameron claimed that the unit costs on the starter production lines were going up but the proof in this respect was vague and unclear. Cameron also testified that had he given the three employees a temporary layoff he would have been obligated to follow seniority; nevertheless, in the layoff Cameron retained two employees who did not hold senior seniority on the rotor and stator line. Cameron testified that he chose to lay off the entire de-

partment instead of part of it "[b]ecause the other people had already been burdening the other lines and it was the easiest solution at the time to solve the problem."

The work on the rotor and stator line which was being performed by the three rotor and stator line employees was finished by the maintenance helpers. After the rotor and stator line employees were laid off Foreman Calvin Allen complained that he "could no longer get out production."

The then existing contract provided that "The Company shall endeavor, where possible, to notify the Union forty-eight (48) hours prior to a layoff involving more than 10 employees." (Jt. Exh. 1, p. 6.)

Cameron testified that he "would say" that there was a "hostile" relationship between the Respondent and the Union.

Second: The General Counsel has established a *prima facie* case by offering evidence that (1) there was a hostile relationship between the Respondent and the Union; (2) the Respondent laid off rotor and stator line employees following a threat that it would layoff such employees if the Union insisted on pressing a complaint; (3) the Respondent did not follow the contractual procedure in informing the Union of the forthcoming layoffs; (4) the Respondent refused the Union's compromise offer of the layoff of the three employees involved in the complaint and insisted on laying off all rotor and stator line employees who were then being employed on other production lines; and (5) the Respondent refused to switch the rotor and stator line employees to painting and the maintenance employees who were painting to the assembly line.

The Respondent insists that the layoffs were not motivated by a desire to retaliate or punish the Union for lodging a complaint but resulted from the burdening of the other lines by the retention of the rotor and stator line employees. Other than the self-serving declarations of Cameron there was no credible proof that such a circumstance existed. In fact there is no credible proof that the Respondent had intended to lay off any of the rotor and stator line employees assigned to other lines until the incident of October 28, 1980. Indeed, the Respondent's intent to punish seems apparent in its refusal to compromise and its insistence on laying off all the rotor and stator line employees rather than the three assigned for conveyor assembly work. Moreover, the credited evidence is that there was work available for the rotor and stator line employees. Thus, the Respondent has not shown that the Respondent would have laid off the employees even in the absence of the Union's complaint. See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1981). Hence, the credited record supports a finding that the Respondent laid off rotor and stator line employees as a punishment for the Union's pressing of a legitimate complaint and thus the Respondent violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

up the pieces of the conveyor were not allowed to do this work." D'Escarole reported the complaint to Williams. In the meantime D'Escarole "reassigned the two individuals to assist the two ladies in painting." The next day D'Escarole was told to "lay the people off."

⁶ Longo remembered, "Mike replied that Mr. Williams said that he gave us an ultimatum and we refused and therefore all the people were being laid off, and Mr. Cameron stated then, he said, 'well, that's the way it's going to be then.'"

2. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the policies of the Act for jurisdiction to be exercised herein.

3. By laying off Ruth Bechtol, Esther Ferree, Mary Frazier, Patricia Yarnell, June Perry, Carter Kinley, Betty Merrill, Sharon Gummo, John Latchet, James Etters, Ronald Geyer, and Margaret Confer during the period from October 31 to November 14, 1980, the Respondent violated Section 8(a)(1) and (2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that the Respondent engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it has been found that the Respondent violated Section 8(a)(3) of the Act by laying off Esther Ferree, Ruth Bechtol, Mary Frazier, Patricia Yarnell, June Perry, Carter Kinley, Betty Merrill, Sharon Gummo, John Latchet, James Etters, Ronald Geyer, and Margaret Confer during the period October 30 to November 14, 1980, it is recommended that the Respondent make said employees whole for any loss of earnings they may have suffered as a result of such layoffs with interest thereon to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 117 (1977).⁷

Accordingly, upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁸

The Respondent, Champion Parts Rebuilders, Inc., Northeast Division, Beech Creek, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully laying off employees in retaliation or punishment for the Union's pressing legitimate complaints in violation of Section 8(a)(1) and (3) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make whole Esther Ferree, Ruth Bechtol, Mary Frazier, Patricia Yarnell, June Perry, Carter Kinley, Betty Merrill, Sharon Gummo, John Latchet, James Etters, Ronald Geyer, and Margaret Confer for any loss

of earnings they may have suffered as the result of their unlawful layoff in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its Beech Creek, Pennsylvania, plant copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT unlawfully lay off our employees in retaliation or punishment for the International Brotherhood of Electrical Workers, Local 1592, AFL-CIO's pressing legitimate complaints in violation of Section 8(a)(1) and (3) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL make whole Esther Ferree, Ruth Bechtol, Mary Frazier, Patricia Yarnell, June Perry, Carter Kinley, Betty Merrill, Sharon Gummo, John Latchet, James Etters, Ronald Geyer, and Margaret Confer for losses they may have suffered as a result of their unlawful layoff between October 30 and November 14, 1980, plus interest.

CHAMPION PARTS REBUILDERS, INC.,
NORTHEAST DIVISION

⁷ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.